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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

GREITZER & LOCKS, et al.,

Petitioners,

v.

JOHNS-MANVILLE CORPORATION, et al.,

Respondents

RE: PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

REPLY OF JOHNS-MANVILLE CORPORATION AND JOHNS-MANVILLE SALES SALES CORPORATION TO RESPONSE OF PETITIONERS TO MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI DURING PENDENCY OF AUTOMATIC STAY UNDER 11 U.S.C. §362(a)(1)

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INTRODUCTION

Since 1976 hundreds of plaintiffs have filed suits against Johns-Manville Corporation and Johns-Manville Sales Corporation (hereinafter Johns-Manville) in the United States District Court for the Eastern District of Virginia. As of October, 1980, over two hundred of these plaintiffs were being represented by the Philadelphia firm of Greitzer and Locks. The great majority of these cases involved construction and repair of Naval vessels at both public and private shipyards. Greitzer and Locks, in addition to the Virginia cases, represented more than eight hundred plaintiffs outside Virginia, many of whom also worked in shipyards.

The United States government, for many years, has also been involved in the asbestos litigation. The General Services Administration (GSA), the Department of Health and Human Services (HHS), the Labor Department, and the Navy were at least four governmental branches that had either direct or indirect involvement. Their chief lawyer was Neil R. Peterson.

The Navy was alleged by defendants in shipyard cases to be the proximate or intervening cause of plaintiffs' alleged injuries, and much discovery was conducted of the Navy in this regard. The Navy's chief attorney in this discovery effort was Neil R. Peterson.

The Navy was sued in Virginia in both public and private shipyard cases for contribution or indemnity. The Navy's chief attorney was Neil R. Peterson.

The United States government had proprietary information concerning defendants which was withheld by the government from the eyes of Greitzer and Locks when they attempted to discover the same. The information was withheld from Greitzer and Locks by the staff attorneys working under Neil R. Peterson.

Defendants in the Virginia litigation entered into a settlement agreement among themselves, which, by court order, Greitzer and Locks was forbidden to see. This agreement was seen, however, by Neil R. Peterson.

Defendants in Virginia conducted informal interviews of government employees. Greitzer and Locks were not allowed to be present. Mr. Peterson's staff attorneys were, on condition that the discussions be kept confidential by the government. The government staff attorneys discussed these interviews with their boss, Neil R. Peterson.

In October, 1980, Neil R. Peterson joined the law firm of Greitzer and Locks. Johns-Manville and certain other defendants, in the cases filed against them by Greitzer and Locks, filed a Motion to Disqualify Peterson and Greitzer and Locks from further participation in such cases. All three active status United States District Judges who regularly sit in Norfolk, and who had all presided at asbestos related trials, unanimously granted the Motion to Disqualify, after a full evidentiary hearing. The Fourth Circuit Court of Appeals, en banc, affirmed.

On August 26, 1982, Johns-Manville, the target defendant of Greitzer and Locks in the Virginia cases in which the Motion to Disqualify arose, filed with the United States Bankruptcy Court for the Southern District of New York for reorganization under Chapter 11 of the Bankruptcy Act, 11 U.S.C. § 1 et seq. Section 362(a)(1) of the Act states:

> Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, applicable to all entities of
>
> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . (Emphasis added.)

The Restraining Order entered by the Bankruptcy Court affirms this automatic stay.

On September 15, 1982, in contemptuous disregard of the above statute of the United States and the Order of the Bankruptcy Court, and without seeking any relief from the stay, although there are statutory avenues available, Greitzer and Locks filed its Petition for Writ of Certiorari in this Court. Johns-Manville has moved to defer consideration

of the Petition during the pendency of the automatic stay. Greitzer and Locks have filed a response, and this is a reply thereto.[1]

ARGUMENT

Petitioners' response to the Motion of Johns-Manville to Defer Consideration of the Petition, misses the point, begs the question, only addresses the issue at hand tangentially, is generally misleading, and demonstrates once again the refusal of Messrs. Greitzer and Locks to follow appropriate judicial procedure.

The Motion of Johns-Manville to Disqualify Greitzer and Locks and Neil R. Peterson was filed in, arose out of, and pertains directly to, over two hundred plaintiffs' actions filed by Greitzer and Locks against Johns-Manville. For Greitzer and Locks to now come into this High Court and suggest that their Petition does not relate to a matter filed against Johns-Manville, is ludicrous. Nor can Greitzer and Locks suggest that their Petition does not relate to a matter affecting the bankrupt's estate. Johns-Manville moved for disqualification because of the adverse and prejudicial impact that the hiring of Neil R. Peterson had on the millions of dollars in claims filed by Greitzer and Locks against Johns-Manville. No determination has been made as to how these claims will now be resolved but certainly, until such determination is made, it cannot be presumed, nor supported by any rational process, that the prejudice does not still exist. Because the instant disqualification matter is inextricably a part of cases filed against Johns-Manville, and has a direct effect upon claims against the bankrupt estate, it was automatically stayed by the provisions of 11 U.S.C. §362(a)(1) on August 26, 1982.

In view of the automatic stay, the Petition for Writ of Certiorari should never have been filed unless and until Greitzer and Locks applied for and obtained from the Bankruptcy Court, under 11 U.S.C.§362(d) or (f), appropriate relief from the stay. However, such relief was never sought,

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[1] In the event Johns-Manville's Motion to Defer is denied, Johns-Manville adopts and incorporates as its Response to the Petition for Writ of Certiorari, the Response filed by H. K. Porter Company, Inc., et al.

because, we must assume, Greitzer and Locks feared that following the proper procedure would have resulted in a refusal by the Bankruptcy Court to lift the stay. Instead, Greitzer and Locks once again have ignored proper and appropriate procedures, and have tried to bully their way past them. This is indicative of the same pattern of disregard of judicial and statutory rules which resulted in their disqualification in the first instance. Their bullying tactics should not be allowed to succeed.

This matter was automatically stayed on August 26, 1982, and accordingly, the Motion of Johns-Manville to Defer Consideration is appropriate. Deferral will not result in any prejudice to plaintiffs. The lower court in its Order of Disqualification made ample provision for co-counsel for plaintiffs to have extra time to prepare for trial. These co-counsel or "young lawyers," as they are referred to by Petitioners, who have been associated from the beginning with Greitzer and Locks in the Virginia cases, and who have actively represented plaintiffs vigorously for six years, are 40 and 34 years old respectively, and just two months ago extracted a verdict of $829,000 in favor of four plaintiffs.[2]

Greitzer and Locks have been held by a unanimous three Judge panel of the District Court, and by five Circuit Court Judges, to have violated the Canons of Professional Responsibility and, in so doing, to have threatened the integrity of the litigation which they had filed against Johns-Manville. Now, after Johns-Manville, in financial peril, takes appropriate steps under the Bankruptcy statutes to protect itself against financial disaster, Greitzer and Locks contemporaneously ignores those same statutes, and attempts to have this Court review a Petition for Writ of Certiorari, which review would strip Johns-Manville of the very protection that is contemplated by the statutes.

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[2] Petitioners argue that the first trial of these cases, with Greitzer and Locks present, resulted in higher verdicts. While this is true, it also resulted in the entry of Judgment N.O.V. in favor of the defendants for numerous reasons, including the fact that the verdict was speculative as a matter of law.

Petitioners should not be allowed to circumnavigate a statutory mandate, simply by ignoring it, especially when that very same statute affords Petitioners the right to apply for a lifting of the stay should they so desire. The Motion of Johns-Manville to Defer Consideration of the Petition for Writ of Certiorari During the Pendency of the Automatic Stay should be granted.

Petitioners, demonstrating the weakness of their first argument, submit that, if this Court is not inclined to deny the Motion to Defer so long as Johns-Manville remains a party, Johns-Manville should be severed. This additional strategy of Petitioners (predicted by Johns-Manville in its Motion to Defer) should also be thwarted, for several reasons. First, Petitioners cite no rule or statute, and offer no authority for the severance, other than to refer obtusely to a decision of the trial court to sever Johns-Manville and Unarco (which also has filed for reorganization under the Bankruptcy Act) which ruling is itself the subject of an appeal to the Fourth Circuit. Second, Johns-Manville has taken the lead in this fight, its rights and the status of plaintiffs' claims against it are greatly affected by this case, and to refuse to defer consideration until Johns-Manville can participate would be either (1) to unalterably affect its substantive rights without it being represented, or (2) to force it to waive its statutory protection under the automatic stay provisions of 11 U.S.C. §362(a)(1), and suffer the expense and effort to defend its position in matters arising out of claims filed against it prior to its filing for reorganization. Third, Petitioners could have acted appropriately, and sought relief from the Bankruptcy Court, or a severance, <u>before</u> filing the Petition for Writ of Certiorari. However, true to form, Petitioners blatently ignored theses proper avenues of redress. Accordingly, Petitioners' effort to sever Johns-Manville under these circumstances, and at this late and improper date, should be denied.

CONCLUSION

The Motion of Johns-Manville to Defer Consideration of the Petition for Writ of Certiorari During the Pendency of the Automatic Stay under 11 U.S.C. §362(a)(1), should be granted.

JOHNS-MANVILLE CORPORATION AND
JOHNS-MANVILLE SALES CORPORATION

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CERTIFICATE

This is to certify that pursuant to Rule 28.5(b), Rules of the United States Supreme Court, I have mailed a true copy of the foregoing pleading by depositing same in a United States post office mailbox, first calss, postage pre-paid, or hand delivering same to the following, this 14th day of October, 1982:

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C. Michael Montgomery